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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/780,843   | 02/09/2001  | Charles F. Milo      | 1849.16102B-CIP     | 8513             |
| 26308  | 7590        | 03/23/2004           | EXAMINER            |                  |
| RYAN KROMHOLZ & MANION, S.C.<br>POST OFFICE BOX 26618<br>MILWAUKEE, WI 53226 |             |                      | NGUYEN, VI X        |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3731                | 76               |
| DATE MAILED: 03/23/2004  |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/780,843

Applicant(s)

MILO ET AL.

Examiner

Victor X Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-6 is/are rejected.
- 7) ☒ Claim(s) 2, 7 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statements (IDS) which contained of The West et al. journal submitted on 1/14/2002 has not been considered because this reference was not available in the file at the time the application was being examined. Resubmitted this journal reference is requested.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 3-6 are rejected under 35 U.S.C. 102 (e) as being anticipated by Zadno-Azizi et al (U.S. 6,022,336).

Regarding claim 1, Figures 6, 18c-18f and col. 11, lines 63-67, col. 21, lines 22-67, Zadno-Azizi et al disclose an assembly including: a catheter (140, 420), wherein at least one nozzle (144) locates adjacent the distal end. The catheter has the first and second components for dispensing through at least one nozzle (144); and wherein a structure (426) carries by the catheter distal to the one nozzle (144) and being arranged for expansion within the blood vessel. The structure (426) includes an open configuration allowing blood flow through the structure (col. 21, lines 8-55). Note: The introductory statement of intended use and all other functional

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statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over the Zadno-Azizi et al reference which is capable of being used as claimed if one desires to do so.

Regarding claims 3 and 4, wherein the assembly further includes a mechanism to operate the structure (426) between a collapsed and an expanded condition; and wherein the mechanism includes an element (434- inherent feature) to lock the structure in a desired condition.

Regarding claims 5 and 6, wherein an introducer assembly (labeled as a syringe in col. 21, lines 54-60) communicates with the catheter; and wherein the introducer assembly includes an air vent (412).

#### ***Allowable Subject Matter***

3. Claims 2 and 7-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to disclose the solid closure material composition forms a localized in the vessel puncture site, wherein a mixing chamber is used to bring the first and second components into a mixed condition.

#### ***Response to Arguments***

4. Applicant's arguments filed 12/29/2003 have been fully considered but they are not persuasive. With respect to claim 1, In response to applicant's argument that the Zadno-Azizi'336 reference does not teach a structure comprising an open configuration allowing blood flow through the structure. The Examiner, respectfully, disagrees. As the examiner has pointed

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out above, item 426, figs 18c, 18d of Zadno-Azizi can be characterized as a broadly structure that includes an open configuration allowing blood flow through the structure (col. 21, lines 8-55). Note: The introductory statement of intended use and all other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over the Zadno-Azizi et al reference which is capable of being used as claimed if one desires to do so. Therefore, at least claim 1 of the invention is not defined over the Zadno-Azizi et al'336 reference.

### *Conclusion*

**5. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen  
Examiner  
Art Unit 3731

Vn VJ  
March 19, 2004

  
MICHAEL J. MILANO  
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